

COMMENTS ON THE RRG DRAFTING GROUP PROPOSAL

BY THE

WESTERN PUBLIC AGENCIES GROUP

1. Introduction

The following comments on the RRG drafting group proposal (“Proposal”) fall into two categories, clarifications and suggested changes. They are not presented in order of importance.

2. Suggested Clarifications to the Proposal

A. Start Up

The Proposal implicitly contemplates that the independent entity will commence operation at the same time for the investor owned utilities and BPA, and that there will be a regional decision making process in place while the independent entity moves through the decisions set out in the Proposal. At the same time, the Proposal also envisions that some, but not all, utilities may combine control areas, and that joining the independent entity will be voluntary.

When all of these factors are considered together, it is possible that only two or three utilities could combine control areas and form an independent entity, while other utilities decide not to join. Under such circumstances, it is unclear whether the decisions of the independent entity composed of a minority of utilities on matters set out in the Proposal (such as a shift to a single tariff) would be binding, or how the governance provisions would work in such a situation.

Recommendation – There should be a minimum number of participating utilities before the decisions of the independent entity are considered binding for the region. Four participating utilities would be a good minimum participation number.

B. Alternative Dispute Resolution

Alternative dispute resolution (“ADR”) is mentioned in sections 1.2 (Physical Interconnection) and 8 (Regional ADR) of the Proposal. Neither of these sections clarifies who would be able to participate in the ADR process. Since speedy and fair dispute resolution is vital to the success of an independent entity, there needs to be clarity regarding who has access to ADR.

Recommendation – The Proposal should expressly state as a principle that ADR will be available to resolve disputes that arise from the activities of the independent entity, and

real parties in interest will be able to participate as a party regardless of the presence or absence of a direct contractual nexus with the independent entity.

C. Matters Not Subject to Special Issues Vote

The Proposal sets out a number of fairly important decisions that are not subject to the requirement of the Special Issues Vote. Since enhanced regional accountability is one of the major objectives of the Proposal, clarifying in the Proposal the consultative process that will be followed for matters not subject to the Special Issues Vote would help achieve this objective.

Recommendation – The Proposal should state that before taking action on any of the items set forth in the Proposal that are not subject to the Special Issues Vote, the independent entity will provide the Trustee Selection Committee (“TSC”) with advance notification of the matter under consideration, provide the TSC with the information on the matter that is available to the independent entity, and provide opportunities to submit input (in oral and written form) to the independent entity prior to it taking action.

D. TOA

In the Stage II filing, the TOA played a major role in limiting the actions that the new regional transmission entity could take once it commenced operations. It is unclear from the Proposal where the restrictions on the actions of the independent entity, such as the Special Issue Vote, would be codified and who would be capable of seeking enforcement of them. Clarification in this area is vital to a realistic evaluation of the Proposal.

Recommendation – Since regional accountability is one of the major goals of the Proposal, it seems that two clarifications would enhance the Proposal. The first would be to state that the limitations (such as the Special Issues Vote) and other requirements (such as the standards for moving to the next stage) will be included in the bylaws of the independent entity, and that they will be enforceable by any transmission user regardless of the presence or absence of a direct contractual nexus with the independent entity.

E. Standard for Change

The Proposal does a commendable job of setting up beginning states, and then providing stages of development to what is called an “advanced target state.” However, with the exception of the transition from a physical to financial rights model (see, section 1.3, Issue 3), the Proposal does not state the standard or criteria that must be satisfied to move from one stage to the next. Since these decisions will be of major importance to the region, clarity on the decision criteria for moving from one stage to the next is important.

Recommendation – The Proposal should contain specific criteria to be used by the independent entity to evaluate whether movement from the current to a new stage is warranted. These criteria would apply to both matters requiring a Special Issues Vote and those that do not require such a vote, and should include the following:

- The change will provide demonstrable benefits over the current situation, and such benefits will exceed the costs of moving to the next stage.
- The change will resolve a current, identifiable problem and will not generate new additional problems.
- The change will not result in material cost shifts.
- The change can be implemented within the terms of existing contracts, settlements and other relevant legal obligations.

3. Suggested Changes to the Proposal

A. Addition to the Special Issues Vote

The Special Issues Vote requirement is a way of focusing increased scrutiny on matters that will have a major impact on the regional transmission system, the rights of the transmission system users, or that amount to a major change in the way that the regional transmission system is operated. For the most part, the Proposal does a good job of attaching this additional requirement on issues of importance.

However, there is one issue in the Proposal that did not get included in the Special Issues category that deserves such treatment, and that is the shift to a single tariff (Section 1.4, Tariff Administration). The shift to a single tariff, presumably issued by the independent entity, will potentially have a profound impact on the procedural rights of transmission users, as interested parties throughout the region. Such a major shift in how transmission rates are set should be subject to the heightened scrutiny that comes from the Special Issues Vote procedures.

Recommendation – The shift from multiple to a single tariff (Section 1.4) should be subject to the Special Issues Vote procedure.

B. Shift to Financial Model

Conversion from the physical rights to a financial rights model must be taken up by the independent entity not later than three and one-half years after startup. If it is not implemented at that time, it must be reconsidered every two years thereafter in perpetuity. (Section 11.3, Issue 3). This is the only matter that has an ongoing requirement of this sort. While it is understandable that the independent entity should be required to revisit this issue a limited number of times, the notion that it be required to do so every two years forever makes no sense.

Recommendation – The independent entity should be required to determine if conversion to a financial rights model is called for, based on the normal criteria for change and the Special Issues Vote procedures, at a point three and one-half years after startup, and again at a point six years after startup. Thereafter, the independent entity should be free to take this matter up, or ignore it, on timing of its own determination.

C. Special Issues Vote

The Special Issues Vote provides scrutiny on matters that will have a major impact on the regional transmission system, the rights of the transmission system users, or that amount to a major change in the way that the regional transmission system is operated. These matters will remain important even after the first decision is made to make a change in any of these areas. As the Proposal is currently structured, only the first decision of the independent entity in each of these areas is subject to the Special Issues Vote procedure. After that initial decision, the Proposal treats these matters as having little regional significance.

The matters identified in the Proposal as being sufficiently significant to require the Special Issues Vote procedures will continue to be important even after the initial decision. As a consequence, decisions in these areas made after the initial decision should be subject to the Special Issues Vote procedures.

Recommendation – The Proposal should state that all decisions in areas that are subject to the Special Issues Vote requirement should continue to those procedures over time. For example, the initial decision to shift from a company rate to some other rate is subject to the Special Issue Vote requirement. Once that change has been made, a change to the rate that took the place of the company rate should also be subject to the Special Issue Vote requirement